



House of Representatives

General Assembly

File No. 116

January Session, 2015

Substitute House Bill No. 6729

House of Representatives, March 19, 2015

The Committee on Environment reported through REP. ALBIS of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE USE OF CERTAIN NOISE-MAKING DEVICES FOR AGRICULTURAL PURPOSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22-26g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) No person may use any noise-making device to scare or repel
4 wildlife in order to prevent the damage and destruction of agricultural
5 crops unless such person obtains a permit for each such device from
6 the Commissioner of Agriculture. Notwithstanding any provision of
7 the general statutes or any provision of a municipal ordinance, which
8 ordinance is adopted after June 21, 1967, a person engaged in
9 agriculture may make written application to the commissioner for such
10 a permit on forms prescribed by the commissioner. The commissioner,
11 or [his] the commissioner's designee, [shall] may make an on-site
12 inspection prior to making a final determination regarding an
13 application for such permit. Prior to the issuance of such permit, the
14 applicant shall provide evidence of the need for protection of [his] the

15 applicant's crops, [and] a description of other methods employed to
16 prevent crop damage and an estimate of the potential loss, as a
17 percentage of the crop, attributed to wildlife damage. The term of the
18 permit shall be for the period for which protection of the crops
19 specified in the application is necessary.

20 (b) The application shall state (1) the type of noise-making device to
21 be used, (2) the location of the farm where such device will be used, (3)
22 the locations on the farm where such device will be used, (4) the
23 animal causing damage, (5) the crops to be protected, (6) the hours and
24 interval of operation, (7) the period for which protection is needed, and
25 (8) the name, address and signature of applicant or landowner, if
26 different.

27 (c) The commissioner may authorize the use of the following in
28 permits issued under this section: Propane exploders, acetylene
29 exploders, carbide exploders, electronic noisemakers and similar noise-
30 making devices. The use of fire crackers and similar explosives is
31 prohibited. No permit shall be issued for the use of any noise-making
32 device for a property of less than five acres in area or for use within
33 five hundred feet of any dwelling, other than the dwelling of the
34 applicant for such permit, without the written consent of the occupants
35 of such dwelling.

36 (d) No person may operate or allow the operation of noise-making
37 devices pursuant to this section in excess of 80 dB peak sound pressure
38 level from ten o'clock p.m. to seven o'clock a.m. local time or in excess
39 of 100 dB peak sound pressure level from seven o'clock a.m. to ten
40 o'clock p.m. local time. Such sound level shall be as measured from the
41 property line of any receptor residential property. Any noise-making
42 device authorized pursuant to this section shall be operated in
43 accordance with the recommendations of the manufacturer of such
44 device and any written conditions contained in the permit that the
45 commissioner or the commissioner's designee deems appropriate.

46 (e) No noise-making device shall be used in any manner or in any
47 location that may endanger public safety. Any noise-making device

48 permitted under this section to repel or scare birds may only be
49 operated from one-half hour before sunrise to one-half hour after
50 sunset. Any such noise-making device used to repel or scare nocturnal
51 or crepuscular marauding wild animals may be operated between
52 sunset and sunrise.

53 (f) Any noise-making device used pursuant to this section shall bear
54 a weather-resistant tag that shall state the name, address and phone
55 number of the operator of the noise-making device. At all times, such
56 tag shall be securely affixed to the noise-making device and shall be
57 legible.

58 ~~[(f)]~~ (g) If the legislative body of any municipality adopts a
59 resolution [which] that states that there is undue hardship on nearby
60 residents as a result of the use of any device permitted under this
61 section, and [which] that requests that the commissioner deny or
62 cancel the right to use such device, the commissioner, in accordance
63 with the provisions of chapter 54, may deny or cancel a permit to use
64 such device if [he] the commissioner determines that its use creates, or
65 will create, an undue hardship on nearby residents. In making any
66 such decision, the commissioner may consult with experts in wildlife
67 damage to crops and any county or state-wide advisory group [he] the
68 commissioner deems appropriate.

69 ~~[(g)]~~ (h) The Commissioner of Agriculture, [may revoke a permit
70 issued pursuant to this section] or the commissioner's designee, shall
71 issue a warning notice for any violation of any provision of this
72 section. [provided the] The commissioner shall revoke [such] a permit
73 issued pursuant to this section for not less than one year upon the third
74 violation of this section in any twelve-month period by [any] such
75 permittee. Any person who has his or her permit revoked by the
76 commissioner or the commissioner's designee may appeal such order
77 provided such person requests a hearing, in writing, to the
78 commissioner and such request is received by the commissioner not
79 later than fifteen days after the date of such order. During any such
80 appeal, such order shall remain in effect until a final decision is

81 rendered. The commissioner may appoint a hearing officer to hear
82 such appeal and render a final decision, as the commissioner deems
83 appropriate. In any such appeal, the only consideration shall be
84 whether the violation or violations alleged actually occurred.

85 (i) Any person who operates a noise-making device without a
86 permit, during an appeal period for a permit revocation, or after a
87 permit is revoked shall be fined one hundred dollars for the first
88 offense and three hundred dollars for a second and any subsequent
89 offense. Each noise-making device operated in violation of this section
90 shall constitute a separate offense.

91 Sec. 2. Subsection (b) of section 51-164n of the general statutes is
92 repealed and the following is substituted in lieu thereof (*Effective*
93 *October 1, 2015*):

94 (b) Notwithstanding any provision of the general statutes, any
95 person who is alleged to have committed (1) a violation under the
96 provisions of section 1-9, 1-10, 1-11, 4b-13, 7-13, 7-14, 7-35, 7-41, 7-83, 7-
97 283, 7-325, 7-393, 8-12, 8-25, 8-27, 9-63, 9-322, 9-350, 10-193, 10-197, 10-
98 198, 10-230, 10-251, 10-254, 12-52, 12-170aa, 12-292, 12-314b or 12-326g,
99 subdivision (4) of section 12-408, subdivision (3), (5) or (6) of section
100 12-411, section 12-435c, 12-476a, 12-476b, 12-487, 13a-71, 13a-107, 13a-
101 113, 13a-114, 13a-115, 13a-117b, 13a-123, 13a-124, 13a-139, 13a-140, 13a-
102 143b, 13a-247 or 13a-253, subsection (f) of section 13b-42, section 13b-
103 90, 13b-221, 13b-292, 13b-336, 13b-337, 13b-338, 13b-410a, 13b-410b or
104 13b-410c, subsection (a), (b) or (c) of section 13b-412, section 13b-414,
105 subsection (d) of section 14-12, section 14-20a or 14-27a, subsection (e)
106 of section 14-34a, subsection (d) of section 14-35, section 14-43, 14-49,
107 14-50a or 14-58, subsection (b) of section 14-66, section 14-66a, 14-66b
108 or 14-67a, subsection (g) of section 14-80, subsection (f) of section 14-
109 80h, section 14-97a, 14-100b, 14-103a, 14-106a, 14-106c, 14-146, 14-152,
110 14-153 or 14-163b, a first violation as specified in subsection (f) of
111 section 14-164i, section 14-219 as specified in subsection (e) of said
112 section, subdivision (1) of section 14-223a, section 14-240, 14-249, 14-
113 250 or 14-253a, subsection (a) of section 14-261a, section 14-262, 14-264,

114 14-267a, 14-269, 14-270, 14-275a, 14-278 or 14-279, subsection (e) or (h)
115 of section 14-283, section 14-291, 14-293b, 14-296aa, 14-319, 14-320, 14-
116 321, 14-325a, 14-326, 14-330 or 14-332a, subdivision (1), (2) or (3) of
117 section 14-386a, section 15-25 or 15-33, subdivision (1) of section 15-97,
118 subsection (a) of section 15-115, section 16-44, 16-256e, 16a-15 or 16a-22,
119 subsection (a) or (b) of section 16a-22h, section 17a-24, 17a-145, 17a-149,
120 17a-152, 17a-465, 17a-642, 17b-124, 17b-131, 17b-137 or 17b-734,
121 subsection (b) of section 17b-736, section 19a-30, 19a-33, 19a-39 or 19a-
122 87, subsection (b) of section 19a-87a, section 19a-91, 19a-105, 19a-107,
123 19a-113, 19a-215, 19a-219, 19a-222, 19a-224, 19a-286, 19a-287, 19a-297,
124 19a-301, 19a-309, 19a-335, 19a-336, 19a-338, 19a-339, 19a-340, 19a-425,
125 19a-502, 20-7a, 20-14, 20-158, 20-231, 20-249, 20-257, 20-265, 20-324e, 20-
126 341l, 20-366, 20-597, 20-608, 20-610, 21-1, 21-30, 21-38, 21-39, 21-43, 21-
127 47, 21-48, 21-63 or 21-76a, subdivision (1) of section 21a-19, section 21a-
128 21, subdivision (1) of subsection (b) of section 21a-25, section 21a-26 or
129 21a-30, subsection (a) of section 21a-37, section 21a-46, 21a-61, 21a-63
130 or 21a-77, subsection (b) of section 21a-79, section 21a-85 or 21a-154,
131 subdivision (1) of subsection (a) of section 21a-159, subsection (a) of
132 section 21a-279a, section 22-12b, 22-13, 22-14, 22-15, 22-16, 22-26g, as
133 amended by this act, 22-29, 22-34, 22-35, 22-36, 22-38, 22-39, 22-39a, 22-
134 39b, 22-39c, 22-39d, 22-39e, 22-49, 22-54, 22-89, 22-90, 22-98, 22-99, 22-
135 100, 22-111o, 22-167, 22-279, 22-280a, 22-318a, 22-320h, 22-324a, 22-326
136 or 22-342, subsection (b), (e) or (f) of section 22-344, section 22-359, 22-
137 366, 22-391, 22-413, 22-414, 22-415, 22a-66a or 22a-246, subsection (a) of
138 section 22a-250, subsection (e) of section 22a-256h, section 22a-363 or
139 22a-381d, subsections (c) and (d) of section 22a-381e, section 22a-449,
140 22a-461, 23-37, 23-38, 23-46 or 23-61b, subsection (a) or subdivision (1)
141 of subsection (c) of section 23-65, section 25-37 or 25-40, subsection (a)
142 of section 25-43, section 25-43d, 25-135, 26-16, 26-18, 26-19, 26-21, 26-31,
143 26-31c, 26-40, 26-40a, 26-42, 26-49, 26-54, 26-55, 26-56, 26-58 or 26-59,
144 subdivision (1) of subsection (d) of section 26-61, section 26-64,
145 subdivision (1) of section 26-76, section 26-79, 26-87, 26-89, 26-91, 26-94,
146 26-97, 26-98, 26-104, 26-105, 26-107, 26-117, 26-128, 26-131, 26-132, 26-
147 138 or 26-141, subdivision (1) of section 26-186, section 26-207, 26-215,
148 26-217 or 26-224a, subdivision (1) of section 26-226, section 26-227, 26-

149 230, 26-232, 26-244, 26-257a, 26-260, 26-276, 26-284, 26-285, 26-286, 26-
 150 288, 26-294, 28-13, 29-6a, 29-25, 29-109, 29-143o, 29-143z or 29-156a,
 151 subsection (b), (d), (e) or (g) of section 29-161q, section 29-161y or 29-
 152 161z, subdivision (1) of section 29-198, section 29-210, 29-243 or 29-277,
 153 subsection (c) of section 29-291c, section 29-316, 29-318, 29-381, 30-48a,
 154 30-86a, 31-3, 31-10, 31-11, 31-12, 31-13, 31-14, 31-15, 31-16, 31-18, 31-23,
 155 31-24, 31-25, 31-32, 31-36, 31-38, 31-40, 31-44, 31-47, 31-48, 31-51, 31-52,
 156 31-52a or 31-54, subsection (a) or (c) of section 31-69, section 31-70, 31-
 157 74, 31-75, 31-76, 31-76a, 31-89b or 31-134, subsection (i) of section 31-
 158 273, section 31-288, subdivision (1) of section 35-20, section 36a-787, 42-
 159 230, 45a-283, 45a-450, 45a-634 or 45a-658, subdivision (13) or (14) of
 160 section 46a-54, section 46a-59, 46b-22, 46b-24, 46b-34, 47-34a, 47-47, 49-
 161 8a, 49-16, 53-133, 53-199, 53-212a, 53-249a, 53-252, 53-264, 53-280, 53-
 162 302a, 53-303e, 53-311a, 53-321, 53-322, 53-323, 53-331 or 53-344,
 163 subsection (c) of section 53-344b, or section 53-450, or (2) a violation
 164 under the provisions of chapter 268, or (3) a violation of any regulation
 165 adopted in accordance with the provisions of section 12-484, 12-487 or
 166 13b-410, or (4) a violation of any ordinance, regulation or bylaw of any
 167 town, city or borough, except violations of building codes and the
 168 health code, for which the penalty exceeds ninety dollars but does not
 169 exceed two hundred fifty dollars, unless such town, city or borough
 170 has established a payment and hearing procedure for such violation
 171 pursuant to section 7-152c, shall follow the procedures set forth in this
 172 section.

| | | |
|---|-----------------|------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | October 1, 2015 | 22-26g |
| Sec. 2 | October 1, 2015 | 51-164n(b) |

ENV *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 16 \$ | FY 17 \$ |
|---------------------------|-----------------------------|-----------------|-----------------|
| Department of Agriculture | GF - Potential Revenue Gain | Less than 1,000 | Less than 1,000 |

Municipal Impact: None

Explanation

The bill changes requirements for noisemaking devices (used by farmers) to repel wildlife to prevent crop damage. The Department of Agriculture issues permits (at no cost) for these devices and performs on-site inspections of complaints.

The bill creates a fine of either \$100 or \$300, depending on the nature of the offense, for operating a noisemaking device without a permit. This is anticipated to generate less than \$1,000 annually.

The agency's Agricultural Marketing and Inspection Representative handles inspections and enforcement of noise-making devices in addition to their duties in other areas of the agency.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

OLR Bill Analysis**sHB 6729*****AN ACT CONCERNING THE USE OF CERTAIN NOISE-MAKING DEVICES FOR AGRICULTURAL PURPOSES.*****SUMMARY:**

This bill adds specific requirements and makes other changes to the law requiring Department of Agriculture (DoAg) permits for the use of noisemaking devices to deter wildlife from damaging crops. By law, these devices include acetylene, carbide, or propane exploders; electronic noisemakers; and similar noisemaking devices.

The bill expands the information a permit applicant must provide to the DoAg commissioner to include an estimate of potential crop loss. It makes optional, rather than mandatory, on-site inspections by the commissioner or his designee before making a final decision on an application.

The bill increases the commissioner's authority to address improper operation. It adds to current law's operation requirements that the devices be (1) operated according to manufacturer recommendations and any commissioner-imposed conditions and (2) labeled with the operator's contact information.

The bill allows the commissioner to consult wildlife experts when deciding to deny or cancel a permit.

It reduces his authority to revoke a permit. Instead of allowing him to revoke one for any violation, he must issue warning notices for violations, and the bill restricts revocation to cases of three violations in a year. It also establishes a procedure to appeal revocation orders.

The bill creates a fine of either \$100 or \$300, depending on the offense, for operating a device without a permit and allows violators to

pay the fine by mail without appearing in court (see COMMENT). It specifies that each device operated in violation of the law is a separate offense.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2015

APPLICATION REQUIREMENTS

By law, permit applicants must provide the commissioner (1) evidence of the need to protect crops and (2) a description of other methods used to prevent crop damage. The bill requires them to also give an estimate of the potential loss, as a percentage of the crop, due to wildlife damage.

The law already requires applicants to provide information about the (1) type of device to be used; (2) location and hours of operation; (3) animal causing damage; and (4) applicant or landowner.

OPERATING REQUIREMENTS

The bill requires noisemaking devices to be operated according to (1) the manufacturers' recommendations and (2) any written conditions in the permit that the commissioner or his designee deem appropriate. It requires each device to have a securely fixed, legible, weather-resistant tag with the operator's name, address, and phone number.

Existing law (1) limits the devices' decibel levels and hours of operation and (2) prohibits use in a way that may endanger the public.

PENALTIES

Permit Denial, Cancellation, or Revocation

Denial or Cancellation. By law, if a municipal legislative body adopts a resolution finding certain noisemakers cause hardship to nearby residents and requests denial or cancellation of the right to use them, the commissioner may deny or cancel a permit. But he must find there is a hardship and the law allows him to consult with county or

statewide advisory groups when making the decision. The bill expands the persons with whom the commissioner may consult to include experts in wildlife damage to crops.

Revocation. Current law allows the commissioner to revoke a permit for any violation of the noisemaking device law, and requires him to do so upon a third violation. The bill reduces his authority to revoke permits by (1) requiring him, or his designee, to issue warning notices for violations and (2) limiting mandatory revocation to cases where three violations occur within a 12-month period. By law, and unchanged by the bill, a revocation must be for at least a year.

Under the bill, anyone whose permit is revoked may appeal the order, but the permittee must make a written request to the commissioner for a hearing. The request must be received by the commissioner within 15 days after the order's date.

The bill allows the commissioner to appoint a hearing officer to hear an appeal and give a final decision. The hearing officer may only consider whether the alleged violation occurred. A revocation order remains in effect during an appeal until the officer makes the final decision.

Fines

The bill establishes a fine for operating a noisemaking device (1) without a permit, (2) during a pending appeal to revoke a permit, or (3) after a permit is revoked.

It subjects violators to a \$100 fine for a first offense and \$300 for second and subsequent offenses. It allows violators to pay the fine without having to appear in court, using the mail-in procedures for infractions and certain violations. But the bill is unclear how the fines will be imposed as the bill requires the commissioner to issue a warning notice for any violation of the noisemaking device law.

COMMENT

Penalty Conflict

The bill contains conflicting provisions in subsections (h) and (i) regarding the penalties for violating the noisemaking device law. One subsection establishes fines for operating without a permit, including a first offense, but the other requires the commissioner to issue warning notices for all violations. Presumably a warning notice would precede a fine.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (02/27/2015)